

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

FRANK LEE WEATHERSPOON

Petitioner

v.

No. 2:04-cv-170

Judge Edgar

DAVID BERGH

Respondent

_____ /

MEMORANDUM

_____ Before the Court is respondent's motion (Doc. No. 41) to transfer petitioner's second or successive petition for writ of habeas corpus. This case already has a fairly lengthy history. However, pursuant to the above referenced motion, respondent has now brought it to the attention of this Court that this is petitioners's second petition for habeas relief under 28 U.S.C. § 2254 challenging his 1981 First Degree Murder conviction in the Michigan state courts. The first petition was denied in 1996. This second petition was filed in 2004.

The Antiterrorism and Effective Death Penalty Act, effective April 24, 1996, requires a petitioner to seek, from the United States Court of Appeals for the Sixth Circuit, an order authorizing this District Court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). When a petitioner files a second or successive petition for habeas corpus relief in the District Court without section 2244(b)(3)(A) authorization from the Sixth Circuit Court of Appeals, this Court must transfer the document(s) to that Court pursuant to 28 U.S.C. § 1631. *In re Sims*, 111 F. 3d 45, 47 (6th Cir. 1997). This Court has not received an order from the Sixth Circuit authorizing this Court to consider

the pending petition. Accordingly, an order will enter **GRANTING** respondents motion to transfer, and the Clerk will be **DIRECTED to TRANSFER** this action to the United States Court of Appeals for the Sixth Circuit, pursuant to 28 U.S.C. § 1631.

SO ORDERED.

Dated: 11/17/06

/s/ R. Allan Edgar
R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE